

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

4 MARC SPITZER, Chairman
5 JIM IRVIN
6 WILLIAM A. MUNDELL
7 JEFF HATCH-MILLER
8 MIKE GLEASON

9 In the matter of:) DOCKET NO. S-03457A-02-0000
10)
11 AMERICAN AUTOMOTIVE GROUP, INC.) **ORDER TO CEASE AND DESIST,**
12 c/o Douglas Warren) **ORDER FOR RESTITUTION, FOR**
13 9044 East Los Gatos Drive) **ADMINISTRATIVE PENALTIES, AND**
14 Scottsdale, Arizona 85255) **FOR OTHER AFFIRMATIVE ACTION**
15) **AND CONSENT TO SAME BY:**
16 DOUGLAS WARREN and JANE DOE WARREN,) **RESPONDENT ROBERT R. BJERKEN**
17 husband and wife)
18 9044 East Los Gatos Drive)
19 Scottsdale, Arizona 85255) **DECISION NO. 65955**
20)
21 MATTHEW W. WARREN and JOAN DOE)
22 WARREN, husband and wife)
23 8912 East Pinnacle Peak #446)
24 Scottsdale, Arizona 85255)
25)
26 ROBERT D. BJERKEN and JANE DOE)
BJERKEN, husband and wife)
5024 North 78th Street)
Scottsdale, Arizona 85250)
Respondents.)

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21 RESPONDENT ROBERT R. BJERKEN (“BJERKEN” or “RESPONDENT”) elects to
22 permanently waive his right to a hearing and appeal under Articles 11 and 12 of the Securities Act of
23 Arizona, A.R.S. § 44-1801, *et seq.* (“Securities Act”) with respect to this Order To Cease And Desist,
24 Order for Restitution, for Administrative Penalties, and for Other Affirmative Action and Consent to Same
25 by Respondent Robert R. Bjerken (“Order”). RESPONDENT admits the jurisdiction of the Arizona
26 Corporation Commission (“Commission”); admits the Findings of Fact and Conclusions of Law contained
in this Order; and consents to the entry of this Order by the Commission.

I.**FINDINGS OF FACT**

1. AMERICAN AUTOMOTIVE GROUP, INC. (“AAG”) formerly was an Arizona corporation, authorized to do business and doing business in Maricopa County, Arizona. Its last known business address was 3168 East Indian School Road, Phoenix, Arizona. AAG is not currently authorized to do business in Arizona. All assets of AAG have been sold and/or transferred to Future Carz, Inc. (“FCI”), beginning on or about February 23, 2001.

2. DOUGLAS WARREN is an individual and a resident of Arizona. At all times material hereto, DOUGLAS WARREN was an officer and/or a director of AAG. At all times material hereto, DOUGLAS WARREN was married to KATHLEEN M. WARREN, who was joined in this action, pursuant to A.R.S. § 44-2031(C), to establish the liability of the marital community of the DOUGLAS WARREN RESPONDENTS for violations of the Securities Act.

3. MATTHEW WARREN is an individual and a resident of Arizona. At all times material hereto, MATTHEW W. WARREN was an officer and/or a director of AAG.

4. RESPONDENT ROBERT D. BJERKEN (“BJERKEN”) is an unmarried man and a resident of Maricopa County, Arizona. On or about October 28, 1998, BJERKEN became trustee of a certain trust established by a trust Indenture agreement dated May 9, 1997 (the “AAG Trust”).

5. AAG was incorporated as an Arizona corporation on or about April 17, 1997. Its incorporators and its initial officers and directors were MATTHEW WARREN and DOUGLAS WARREN.

6. On or about May 9, 1997, RESPONDENT DOUGLAS WARREN and MATTHEW WARREN on behalf of AAG entered into an Indenture (the “AAG Indenture”) establishing the AAG Trust. By the terms of the AAG Indenture, the AAG Trust was to hold and administer the funds raised by sales of 18% Secured Promissory Notes of AAG (the “AAG Secured Notes”). The initial Trustee of the AAG Trust was Richard C. Yavitt, C.P.A. (“Yavitt”).

7. Beginning on or about April 17, 1997, AAG issued, and all Respondents, individually

1 and/or by and through their employees and/or agents, offered and sold the AAG Secured Notes to
2 investors within or from the State of Arizona. The AAG Secured Notes provided for a rate of return of
3 eighteen percent (18%) per year, payable in quarterly installments to the holders thereof. The AAG
4 Secured Notes were issued for a three-year term, and the entire principal amount of each Note was to
5 be payable on the stated maturity date of each AAG Secured Note. The AAG Secured Notes and the
6 funds from the AAG Secured Notes, as well as funds utilized to pay investor interest, were to be held in
7 escrow accounts established at Security Trust Company ("STC") and administered by the Trustee of the
8 AAG Trust. (This arrangement will be referred to as the "AAG Secured Note Program.")

9 8. Beginning in August 1998, AAG issued and Respondents, individually and/or by and
10 through their employees and/or agents, offered and sold unsecured promissory notes of AAG (the "AAG
11 Unsecured Notes") bearing interest at rates from 20% to 30%. In other respects, the terms of the AAG
12 Unsecured Notes were similar to the terms of the AAG Secured Notes.

13 9. Beginning in November 1998, Sunset Crater Leasing, Inc. issued and Respondents,
14 individually and/or by and through their employees and/or agents, sold unsecured promissory notes in
15 Sunset Crater Leasing, Inc (the "Sunset Crater Notes"). The terms of the Sunset Crater Notes were
16 similar to the terms of the AAG Secured Notes and the AAG Unsecured Notes.

17 10. In connection with their offer and sale of the AAG Secured Notes, Respondents made
18 available to investors and potential investors a document entitled Limited Offering Memorandum (the
19 "Offering Document").

20 11. The Offering Document represented that the AAG Secured Notes would be sold as a
21 private offering, and that all investors would be required to be accredited and/or sophisticated investors
22 eligible to participate as investors in a private offering.

23 12. AAG filed a Form "D" with the Securities Division on or about July 10, 1997.

24 13. Yavitt resigned as Trustee of the AAG Trust in the spring of 1998. On or about October
25 28, 1998, BJERKEN entered into an agreement to assume the responsibilities of Trustee of the AAG
26 Trust.

1 14. At the time he assumed responsibility as Trustee of the AAG Trust, BJERKEN had twice
2 previously, in 1991 and in 1996, been ordered to cease and desist from violations of the Securities Act.
3 This fact was not disclosed to investors.

4 15. The Offering Document failed to disclose that funds paid into the AAG Trust by investors
5 who purchased the AAG Secured Notes might be utilized to pay interest to investors who had made
6 earlier purchases of the AAG Secured Notes and/or to purchasers of the AAG Unsecured Notes or the
7 Sunset Crater Notes. In fact, funds paid in by later investors were used to make interest payments to
8 earlier investors.

9 16. AAG stopped making interest payments to investors in the AAG Secured Notes, the
10 AAG Unsecured Notes, and the Sunset Crater Notes (collectively, the “Notes”) as of September, 2000.

11 17. On or about February 23, 2001, Respondents Douglas Warren and/or Matthew
12 Warren, on behalf of AAG, entered into an agreement with FCI (the “Acquisition Agreement”). Pursuant
13 to the Acquisition Agreement, FCI agreed to acquire AAG, and to issue shares in FCI to the holders of
14 the Notes.

15 18. Pursuant to the Acquisition Agreement, Respondents, on behalf of AAG, provided to
16 each of the holders of the Notes a document entitled Exchange Report Dated April 25, 2001 (the
17 “Exchange Report”).

18 19. The Exchange Report disclosed that AAG was “technically bankrupt,” although it had not
19 yet filed for bankruptcy protection, that AAG had not done any business since October 2000, and that
20 AAG had not made any interest payments on the Notes since September 2000.

21 20. The Exchange Report disclosed that AAG proposed to exchange all the Notes for shares
22 of the common stock of FCI, subject to the approval of the holders of the Notes.

23 21. The Exchange Report also disclosed that AAG had failed to meet many of its obligations
24 under the AAG Indenture.

25 22. The Exchange Report further disclosed that AAG had made interest payments to holders
26 of the Notes “primarily from offering proceeds received from later investors.”

23. Respondents, including their employees and agents, raised at least \$5,803,297 through the sale of the AAG Secured Notes to at least 70 investors. Respondents, including their employees and/or agents, also raised at least \$2,550,847 through sales of the AAG Unsecured Notes to at least 16 investors and sale of the Sunset Crater Notes to at least 14 investors. Respondents, including their employees and/or agents, raised a total of at least \$8,354,144 through sales of the Notes.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. From on or about April 17, 1997 through September 2000, RESPONDENT offered or sold securities, in the form of promissory notes, within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. RESPONDENT violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. RESPONDENT violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. RESPONDENT violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

6. RESPONDENT'S conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. RESPONDENT'S conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. RESPONDENT'S conduct is grounds for administrative penalties under A.R.S. § 44-2036.

1 **III.**

2 **ORDER**

3 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the
4 RESPONDENT'S consent to the entry of this Order, the Commission finds that the following relief is
5 appropriate, in the public interest, and necessary for the protection of investors:

6 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENT, his agents, employees,
7 successors and assigns, permanently cease and desist from violating the Securities Act.

8 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENT shall, jointly
9 and severally with the remaining Respondents, pay restitution to investors shown on the records of the
10 Commission in the amount of \$8,234,144.00,¹ plus interest at the rate of 10% per annum from the date of
11 this order until paid in full. Payment shall be made by cashier's check or money order payable to the
12 "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona
13 Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors.
14 If all investors are paid in full, any excess funds shall revert to the state of Arizona.

15 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENT BJERKEN
16 shall pay an administrative penalty in the amount of \$10,000, payable to the "State of Arizona." Payment
17 shall be made in installments by cashier's check or money order, with the initial installment due on the date
18 of this Order. If RESPONDENT does not comply with this order for administrative penalties, any
19 outstanding balance may be deemed in default and shall be immediately due and payable.

20 IT IS FURTHER ORDERED that this Order shall become effective immediately.

21 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

22 _____/s/ _____ James _____ Irvin
23 _____
24 _____
25 _____

26 ¹ The restitution figure reflects a credit of \$120,000 for the potential value of shares in FCI that were to be
exchanged for the Notes pursuant to the Exchange Report, at an assumed value of \$0.04 per share based on the most
recent market bid price.

CHAIRMAN

COMMISSIONER

COMMISSIONER

/s/ Jeffrey Hatch-Miller

/s/ Lowell Gleason

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JAMES G. JAYNE,
Executive Secretary of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of
Phoenix, this 27th day of May, 2003.

/s/ James G. Jayne

JAMES G. JAYNE

Interim Executive Secretary

DISSENT

This document is available in alternative formats by contacting Shelly M. Hood, Executive Assistant to the
Executive Secretary, voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

KCD

CONSENT TO ENTRY OF ORDER

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2 1. RESPONDENT (“BJERKEN” or “RESPONDENT”), admits the jurisdiction of the
3 Commission over the subject matter of this proceeding. RESPONDENT acknowledges that he has been
4 fully advised of his right to a hearing to present evidence and call witnesses and RESPONDENT
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative
7 Code. BJERKEN acknowledges that this Order to Cease and Desist, Order for Restitution, for
8 Administrative Penalties, and for Other Affirmative Action and Consent to Same by Respondent Robert
9 D. Bjerken (“Order”) constitutes a valid final order of the Commission.

10 2. BJERKEN knowingly and voluntarily waives any right he may have under Article 12 of
11 the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting
12 from the entry of this Order.

13 3. BJERKEN acknowledges and agrees that this Order is entered into freely and voluntarily
14 and that no promise was made or coercion used to induce such entry.

15 4. BJERKEN acknowledges that he has chosen not to be represented by counsel in this
16 matter, he has reviewed this Order and he understands all terms it contains.

17 5. BJERKEN admits the Findings of Fact and Conclusions of Law contained in this Order.

18 6. By consenting to the entry of this Order, BJERKEN agrees not to take any action or to
19 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or
20 Conclusion of Law in this Order or creating the impression that this Order is without factual basis.
21 BJERKEN will undertake steps necessary to assure that all of his agents and employees, if any,
22 understand and comply with this agreement.

23 7. While this Order settles this administrative matter between BJERKEN and the
24 Commission, BJERKEN understands that this Order does not preclude the Commission from instituting
25 other administrative proceedings based on violations that are not addressed by this Order.

26 8. BJERKEN understands that this Order does not preclude the Commission from referring

1 this matter to any governmental agency for administrative, civil, or criminal proceedings that may be
2 related to the matters addressed by this Order.

3 9. BJERKEN understands that this Order does not preclude any other agency or officer of
4 the state of Arizona or its subdivisions from instituting administrative, civil or criminal proceedings that may
5 be related to matters addressed by this Order.

6 10. BJERKEN agrees that he will not apply to the state of Arizona for registration as a
7 securities dealer or salesman or for licensure as an investment adviser or investment adviser representative
8 until such time as all restitution and penalties under this Order are paid in full.

9 11. BJERKEN agrees that he will not exercise any control over any entity that offers or sells
10 securities or provides investment advisory services, within or from Arizona.

11 12. BJERKEN agrees that until restitution and penalties are paid in full, BJERKEN will notify
12 the Director of the Securities Division within 30 days of any change in home address or any change in his
13 ability to pay amounts due under this Order.

14 13. BJERKEN understands that default shall render him liable to the Commission for its costs
15 of collection and interest at the maximum legal rate.

16 14. BJERKEN agrees that he will continue to cooperate with the Securities Division including,
17 but not limited to, providing complete and accurate testimony at any hearing in this matter and cooperating
18 with the state of Arizona in any related investigation or any other matters arising from the activities
19 described in this Order.

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24 15. BJERKEN consents to the entry of this Order and agrees to be fully bound by its terms
25 and conditions. If BJERKEN breaches any provision of this Order, the Commission may vacate this
26 Order and restore this case to its active docket.

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/s/ Robert D. Bjerken
ROBERT R.BJERKEN

SUBSCRIBED AND SWORN TO BEFORE me this 3rd day of April, 2003.

/s/ Gary Kirst
NOTARY PUBLIC

My Commission Expires:

September 10, 2004